

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No 392 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE D.C.SRIVASTAVA sd/-

and

Hon'ble MR.JUSTICE H.K.RATHOD sd/-

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1. Whether Reporters of Local Papers may be allowed : NO
to see the judgements? No

2. To be referred to the Reporter or not? No :

3. Whether Their Lordships wish to see the fair copy No :
of the judgement?

4. Whether this case involves a substantial question No :
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?

5. Whether it is to be circulated to the Civil Judge? No :

ORIENTAL INSURANCE CO LTD

Versus

TAIYAB MUBARAK NOTIYAR

Appearance:

MS AVANI S MEHTA for Petitioner
MR SURESH M SHAH for Respondent No. 1

CORAM : MR.JUSTICE D.C.SRIVASTAVA
and
MR.JUSTICE H.K.RATHOD

Date of decision: 14/06/2000

ORAL JUDGEMENT

1. This Appeal can be finally disposed of at the admission stage with the consent of learned Counsel for the parties.

2. The Appeal is directed against an order under Section 163-A of the Motor Vehicles Act passed by the Motor Accident Claims Tribunal, Kutch at Bhuj on 28.12.1999. Ms. Avani S. Mehta for the appellant and Mr.M.S.Shah representing Mr.S.M.shah for the respondent No.1 have been heard. None appears for the respondents No.2 & 3.

3. It is undisputed that the petition under Section 166 of the Motor Vehicles Act is already pending before the Tribunal. Learned Counsel for the appellant has challenged the award under Section 163-A of the Act on various grounds. However, since the petition under Section 166 of the Act is already pending these points can be considered by the Tribunal at the time of final disposal of the main petition. Shri M.S.Shah, learned Counsel for the respondent No.1 states that his client will not withdraw the petition under Section 166 pending before the Tribunal nor shall get it dismissed in default rather it shall be got adjudicated on merits. In view of this statement of the learned Counsel for the respondent No.1, apprehension of the learned Counsel for the appellant that the respondent may withdraw the amount and slip away becomes imaginary. In the impugned Award the Tribunal has directed that out of the total amount of Rs.3,44,500/- deposited before the Tribunal 35 % shall be paid to the claimant through A/c. Payee cheque and the remaining 65 % shall be invested in Fixed Deposit for a period of six years. As such sufficient safeguard has been taken in passing the order for disbursement of the amount by the Tribunal. We do not find any patent infirmity or illegality in the impugned Award. The points urged here can be agitated before the Tribunal in petition under Section 166 of the Act.

4. Accordingly we reject this Appeal with no order as to costs. The amount of Rs.25,000/- deposited in this Court be remitted to the Tribunal immediately.

sd/-

Date : June 14, 2000 (D. C. Srivastava, J.)

sd/-

(H. K. Rathod, J.)

sas